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SERVICE DATE - DECEMBER 3, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-855 (Sub-No. 1X)<sup>1</sup>

A & R LINE, INC.–ABANDONMENT EXEMPTION–  
IN CASS AND PULASKI COUNTIES, IN

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: December 2, 2003

By decision and notice of interim trail use served on November 18, 2003, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by A & R Line, Inc. (A&R), and discontinuance of service by Toledo, Peoria & Western Railway Corporation over, a line of railroad known as the A&R line, extending from milepost 5.1W near Kenneth to the end of the line at milepost 21.0W near Winamac, a distance of 15.9 miles in Cass and Pulaski Counties, IN, subject to environmental, trail use, public use, and employee protective conditions. The exemption was scheduled to become effective on December 18, 2003, unless an offer of financial assistance (OFA) was filed on or before November 28, 2003.

On November 28, 2003, Kokomo Grain Company (Kokomo) timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the 15.9-mile line for \$525,000.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981). Kokomo has submitted financial information, showing that it has the financial resources to acquire and operate the line. Kokomo is thus found to be financially responsible.

Kokomo states that, at its request, A&R provided it with information valuing the line at \$895,027.48. Kokomo indicates, however, that A&R's valuation was for a 21-mile line, rather than the 15.9-mile line proposed for abandonment. Kokomo states that its offer is based on a statement in the petition for exemption indicating that the abandonment would enable A&R to sell or reuse

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<sup>1</sup> Prior decisions in this proceeding also embraced Toledo, Peoria & Western Railway Corporation–Discontinuance of Service Exemption–in Cass and Pulaski Counties, IN, STB Docket No. AB-847 (Sub-No. 2X).

\$525,000 worth of rails, ties, and other track materials. Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), Kokomo has explained the basis for the difference between its lower estimate for the line and A&R's estimated value for the line.

Kokomo has stated that it intends to provide rail service over the line. Because Kokomo is financially responsible and has offered assistance, the effective date of the exemption authorizing abandonment will be postponed.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$16,800. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemption authorizing the abandonment is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If A&R and Kokomo cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before December 26, 2003. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary